

WIPO Arbitration and Mediation Center**ADMINISTRATIVE PANEL DECISION****“Dr. Martens” International Trading GmbH / “Dr. Maertens” Marketing GmbH v.
[Verweerder]****Case No. DNL2017-0068****1. The Parties**

Complainants are “Dr. Martens” International Trading GmbH of Graefelfing, Germany (“First Complainant”) and “Dr. Maertens” Marketing GmbH of Seeshaupt, Germany (“Second Complainant”) represented by Beetz & Partner, Germany (jointly “Complainants”).

Respondent is [Verweerder] of Mamdoudzou, Mayotte, France.

2. The Domain Name and Registrar

The disputed domain name <doktermartens.nl> (the “Domain Name”) is registered with SIDN through Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2017. On December 6, 2017, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On December 7, 2017, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on December 11, 2017, providing the registrant and contact information disclosed by SIDN, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 12, 2017. The Center verified that the Complaint together with the amendment to the Complaint satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on December 13, 2017. In accordance with the Regulations, article 7.1, the due date for Response was January 2, 2018. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 4, 2018.

The Center appointed Remco M.R. van Leeuwen as the panelist in this matter on January 12, 2018. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

Complainants are the owner of the well-known international brand DR. MARTENS for footwear, clothing and accessories, particularly renowned for its shoes and boots, first sold in the late 50s. “Dr. Martens” footwear, clothing and accessories are available for sale at retailers throughout the world, and through many retailers in the Netherlands, as well as through the website connected to the Complainants’ domain name <drmartens.com>.

Complainants are the proprietor of a number of registrations for the DR. MARTENS trademark in various jurisdictions, as far as relevant in this case, including but not limited to the European Union Trade Mark DR. MARTENS, registered by First Complainant on March 3, 1999, registration number 59147, for goods in classes 14, 16, 18 and 25 and services in classes 35 and 37 (the “Trademark”).

The Domain Name was first registered by Respondent on September 25, 2017. Prior to the date of the Complaint, the Domain Name allegedly was used to host a parking website with links to unauthorized websites offering for sale: footwear, particularly boots, and specifically Dr. Martens footwear. Currently, and on the date of the Complaint, the Domain Name resolves to a parked page (the “Website”) which states (in multiple languages) “The domain is marked as inactive. For more information, please contact your hosting provider.” and at the bottom of the page “© Registrar.eu 2018.”

The contact details provided by Respondent in connection with the registration of the Domain Name are non-existent. Attempts by the Center to communicate with Respondent both through regular post and email to the addresses shown in the Whois details failed and emails sent to Respondent bounced back with an “inactive user” error message.

5. Parties’ Contentions

A. Complainants

Complainants base the Complaint on their well-known and internationally renowned DR. MARTENS trademarks including the Trademark.

Complainants contend that the Domain Name is phonetically identical to the Trademark. According to Complainants the mere spelling of the term “doctor” and its abbreviation “Dr.” as “dokter” does not prevent the likelihood of confusion with the relevant Internet users. The Domain Name and Trademark are further aurally identical since the term “dokter” (the Indonesian spelling of “doctor”) in effect equals the first part of the Trademark.

Complainants argue that Respondent has no rights or legitimate interests in the Domain Name. Respondent has never been authorized by Complainants to use the Domain Name to exploit a parked website with links to unauthorized footwear-selling websites with DR. MARTENS products. The Website also redirects users to direct competitors of Complainants.

Complainants further assert that even if Respondent is selling “Dr. Martens” footwear, Respondent is not entitled to incorporate the well-known Trademark into the Domain Name without being authorized thereto which is, according to Complainants, a clear case of trademark infringement.

Complainants contend that by doing so, Respondent is likely to mislead and deceive consumers into believing that the domain name is sponsored, affiliated or endorsed by Complainant or its licensees. Respondent is, according to Complainants, clearly making false representations regarding Complainants' sponsorship, approval or association with Respondent and/or the Website, which is not the case.

Complainants assert that the Domain Name is being used by Respondent in a manner which takes unfair advantage of and is detrimental to the Trademark.

Complainants argue that the Domain Name and the website connected thereto cause confusion as to the identity of Respondent and Internet users will believe or be likely to believe that the Domain Name is registered to, operated or authorized by, or otherwise connected with Complainant. By choosing the Domain Name Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Website or other online locations, by creating a likelihood of confusion with the Trademark.

According to Complainants, Respondent is not an authorized retailer of the "Dr. Martens" footwear and Respondent has never been authorized as such. Complainants assert that Respondent has knowingly registered the Domain Name with the intention of deceiving and misleading Internet users by creating a likelihood of confusion with the website connected to the domain name <drmartens.com> or the products or services offered thereon by Complainants. Respondent is making an illegitimate commercial use of the Domain Name for commercial gain and to tarnish the Trademark.

Complainants further assert that Respondent is passing off the goodwill and reputation of Complainant, the Trademark and the "Dr. Martens" name.

Complainants assert that Respondent must have had knowledge of Complainant's rights to the Trademark, since the Trademark is a well-known trademark, which suggests opportunistic intentions and bad faith registration by Respondent at the time of registration of the Domain Name.

Complainants further assert that Respondent acted in bad faith when registering the Domain Name as the inclusion by Respondent of the entire Trademark in the Domain Name and the products implied by Respondent with the addition of a completely descriptive element, suggest knowledge of the Trademark on the part of Respondent.

Complainants argue that by registering the Domain Name, Respondent intentionally attempted to attract for commercial gain Internet users to the website connected to the Domain Name by creating a likelihood of confusion with the Trademark. Complainants consider it more than likely that Respondent profits of the goodwill associated with the Trademark by pretending to act as an authorized retailer.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

As Respondent has not filed a Response, the Panel shall rule based on the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact.

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to Respondent.

Pursuant to article 2.1 of the Regulations, Complainants' request to transfer the Domain Name must meet three cumulative conditions:

- a) the Domain Name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which Complainant has rights, or other name by means of article 2.1(a) under II of the Regulations; and
- b) Respondent has no rights to or legitimate interests in the Domain Name; and
- c) the Domain Name has been registered or is being used in bad faith.

Considering these conditions, the Panel rules as follows.

A. Identical or Confusingly Similar

Complainants have based the Complaint on multiple trademarks, including the Trademark. Complainants have submitted a copy of the registration of the Trademark demonstrating that First Complainant is the holder of the Trademark. The Trademark is protected under Dutch law. The Panel assumes the validity of the Trademark and will review the Complaint on that basis.

The Panel notes that it is established .nl case law that the ccTLD suffix “.nl” may be disregarded in assessing confusing similarity between the relevant trademark(s) on the one hand, and the disputed domain name on the other hand (see, *Caterpillar Inc. v. H. van Zuylen Materieel*, [WIPO Case No. DNL2011-0073](#); *Roompot Recreatie Beheer B.V. v. Edoco LTD*, [WIPO Case No. DNL2008-0008](#)).

The Domain Name includes the dominant part of the Trademark (“MARTENS”) preceded by the word “dokter”, which is Dutch for “doctor”. The word “dokter” therefore resembles the first abbreviated part “Dr.” of the Trademark to a significant extent. The registration of “dokter” instead of “Dr” as part of the Domain Name does not prevent the likelihood of confusion in the minds of the relevant Internet users nor does it influence the similarity between the Trademark and the Domain Name. The Domain Name therefore is textually, visually and phonetically nearly identical to the Trademark.

The Panel finds that the Domain Name is confusingly similar to the Trademark for purposes of the Regulations. Therefore, the first requirement of article 2.1(a) under I of the Regulations is met.

B. Rights or Legitimate Interests

Article 2.1(b) of the Regulations requires Complainants to demonstrate that Respondent has no rights to or legitimate interests in the Domain Name. This condition is met if (a) Complainants make out a *prima facie* case that Respondent has no such rights or legitimate interests and if Respondent fails to rebut this (see, e.g., *Technische Unie B.V. and Otra Information Services v. Technology Services Ltd.*, [WIPO Case No. DNL2008-0002](#)).

Complainants allege that Respondent lacks rights to or legitimate interests in the Domain Name for the reasons set out in section 5.A above. The Panel finds that Complainants

have fulfilled their obligation to establish *prima facie* that Respondent has no rights to or legitimate interests in the Domain Name. As a result of its failure to submit a Response, Respondent has not refuted the arguments of Complainants and/or shown rights to or legitimate interests in the Domain Name. Further, no commercial relationship exists between Complainants and Respondent. The Panel could not establish any indication that any of the circumstances as described in article 3.1 of the Regulations apply, nor that Respondent in any possible other way has rights to or legitimate interests in the Domain Name.

In the Panel's view, the further circumstances of this case, which are similar to those of previous .nl cases "*Dr. Martens*" *International Trading GmbH* and "*Dr. Maertens*" *Marketing GmbH v. Katja Braun's nets*, [WIPO Case No. DNL2016-0060](#) and *Coccinelle S.p.A v. Kaoyuanws Trade*, [WIPO Case No. DNL2017-0008](#), also cast doubt on the authenticity of Respondent's operations for purposes of the Regulations.

The Panel notes that the written notice to the postal address as provided by Respondent to SIDN at the time of registration of the Domain Name was undeliverable. The parking page to which the Domain Name resolves does also not provide any relatable name or identity. Moreover, Respondent appears to have provided fictitious (email) addresses as the street ("Rue de la Pompe") in the town ("Mamondzou") appears to be incorrect and the email addresses mentioned in the contact details provided upon registration of the Domain Name appear to be false. The Panel notes that these circumstances are contrary to what would be expected in legitimate circumstances.

The use of the Domain Name by Respondent cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name. As Respondent cannot be considered a genuine reseller, the Panel need not discuss further the so-called Oki Data criteria and considerations (See, *inter alia*, *Score Retail Nederland B.V. v. Anke Eisenhower soho*, Case No. DNL2017-0034).

The Panel concludes that Complainants have met the second requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

Considering the apparent well-known status of the Trademark, the fact that Complainants have never licensed or otherwise authorized Respondent to use the Trademark in a domain name and the nature of the website to which the Domain Name appears to have resolved prior to the date of the Complaint, the Panel finds that Respondent knew or should have known of the Trademark at the time of registration of the Domain Name.

Previous panels have moreover found that the incorporation of a well-known trademark in a domain name without plausible explanation is in itself an indication of bad faith (see, *Intel Corporation v. The Pentium Group*, [WIPO Case No. D2009-0273](#) in which the panel stated: "The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith").¹

The circumstances that the Domain Name is almost identical to the Trademark, the Domain Name is linked to a page maintained by the Registrar and Respondent has not filed a Response nor provided evidence whatsoever of any actual or contemplated good-faith use of the Domain Name (the Panel notes in particular Respondent's apparent

previous use of the Domain Name to sell Complainants' and competitors' products), coupled with the false nature of the provided contact details (on deliberate concealment of identity and contact information, see, *Schering Corporation v. Name Redacted*, [WIPO Case No. D2012-0729](#), *TTT Moneycorp Limited. v. Diverse Communications*, [WIPO Case No. D2001-0725](#), as well as [section 3.3](#) of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("WIPO Jurisprudential Overview 3.0")) are indicative of bad faith on the part of Respondent in its registration and use of the Domain Name as well (see, *The Coca-Cola Company v. P. Engbers*, [WIPO Case No. DNL2012-0037](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#)).

Taking into account the foregoing, the Panel finds that the requirement of registration or use in bad faith of the Domain Name pursuant to article 2.1(c) of the Regulations has been met.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the domain Name, <doktermartens.nl>, be transferred to Complainants, more in particular, for practical reasons, to First Complainant.

Remco M.R. van Leeuwen

Panelist

Date: January 17, 2018

¹ In view of the fact that the Regulations are to a significant extent based on the UDRP, it is well established that cases decided under both the Regulations and the UDRP are relevant to this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, [WIPO Case No. DNL2008-0050](#)).